IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.725 of 2007

For Approval and Signature :

HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL

HON'BLE MR.JUSTICE BHANWAROO KHAN

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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State of Rajasthan & Ors.- Appellants
Versus
Subhodh Mathur - Respondent

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Appearance :

Mr. K.L. Thakur, AAG for the appellants.
Mr. Mukesh Rajpurohit, for the respondent.

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CORAM: HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BHANWAROO KHAN

Date : OCTOBER 3, 2007

ORAL JUDGMENT

(Per : HONOURABLE THE CHIEF JUSTICE MR.J.M.PANCHAL)

The instant appeal is directed against judgment dated November 28, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition no.916/2006 by which the appellants are directed to

give similar treatment to the respondent as was extended to Sh. Rameshwar Lal Sharma, Ramesh Chand Sharma and Babulal Kanoda by regularising his service on the post of Junior Engineer in accordance with law.

The respondent was appointed as Junior Engineer on daily wage basis. The appointment was given in Nehru Rozgar Yojana and is continuing till date. The Government of Rajasthan decided to regularise services of the Junior Engineers working on daily wage basis who had completed 2 years of service by screening them. The respondent appeared before the Screening Committee and furnished required information. The Screening Committee submitted its report dated October 25, 2002 recommending appointment of persons named therein and for the rest, it decided to refer the matter to the Government of Rajasthan for final decision. The services of the respondent were not regularised. Under the circumstances, the respondent invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B.Civil Writ Petition no.916/2006 and prayed to direct the appellants to regularise his services on the post of Junior Engineer by placing him in the pay scale of Rs.5000-150-8000 on and from the date of regularisation of services of four other employees.

When the petition came up for hearing before the learned Single Judge on November 28, 2006, the learned counsel for the parties agreed before the learned Single Judge that the controversy involved in the petition was covered by the judgment of this Court in SBCWp no.5683/1998 decided on June 11, 2004 which was filed by Dara Singh against the State of Rajasthan and ors.

In view of the agreement between the learned counsels for the parties, the learned Single Judge has allowed the petition in terms of the judgment referred-to above and directed the appellants to give similar treatment to the respondent as was extended to Mr. Rameshwar Lal Sharma, Ramesh Chand Sharma and Babulal Kanoda by regularising his services on the post of Junior Engineer in accordance with law which has given rise to the instant appeal.

This Court has heard the learned counsels for the parties and considered the documents forming part of the petition.

The plea that as grant of regularisation of services of Mr. Rameshwar Lal Sharma, Ramesh Chand Sharma and Babu Lal Kanoda was illegal, the benefit of regularisation should not have been granted to the respondent in view of the decision of the Supreme Court in Post Master General, Kolkata & Ors. Vs. Tutu Das(Dutta) (2007) 5 SCC 317, cannot be accepted.

It is relevant to notice that the learned counsel for the appellants had agreed before the learned Single Judge that the controversy involved in the petition filed by the respondent was covered by the judgment of this Court in the case of Dara Singh (Supra). Therefore this Court is of the firm opinion that now it is not permissible to the appellants to resile from the said stand nor the appellants can be permitted to approbate and reprobate.

Apart from this, the copies of the judgments produced by the learned counsel for the respondent for

perusal of the Court make it evident that Mr. Shiv Narain Pal and Ors. who were similarly situated like the respondent had filed writ petition and the learned Single Judge had directed the appellants to regularise their services. Feeling aggrieved, the appellants had filed D.B.Civil Special Appeal no.6310/2006. The said appeal had come up for hearing before the Division Bench on January 4, 2007 and after hearing the learned counsel for the parties, following order was passed:-

> "Both these appeals arise from same judgment of the learned Single Judge and as such they were taken up together.
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> By the order impugned, the learned Single Judge allowed the claim of the respondent for regularisation of service on the post of Junior Engineer following the decision in the case of Dara Singh vide S.B.Civil Writ Petition no. 8316/2002, since reported in 2005(1) RLW 32 (Raj.) The decision in the case of Dara Singh and others similarly situated like Manoj Kumar Goswami, Rakesh Kumar Sharma and Ajay Kumar Babbar has been implemented by the Department of Local Self Government, vide memo no. 2796-2811 dated 15.9.2005. From perusal of the said order, copy whereof was produced by the counsel for the respondent it appears that a decision was taken not to challenge the orders of this Court in different writ petitions preferred by Dara Singh and others. In that view of the matter we are not able to appreciate as to how the present appeal has been filed. From perusal of the said order it transpires that the government has taken decision to regularise the services of Darea Singh and others as Junior Engineer (Electrical) after cancelling the result of the screening test dated 25.10.2002.
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> There is no dispute that the case of the respondent stands at par with those of Dara Singh and others referred to above. In that view of the matter we are not inclined to entertain the appeals which are accordingly dismissed.

The record further shows that the judgment delivered by the Division Bench of this Court on January 4, 2007 in DB Civil Special Appeal no.6310/2006 was challenged by the appellants before

the Supreme Court by way of filing Special Leave Petition but the Petition(s) for Special Leave to Appeal(Civil)(CC 8865/2007) was dismissed by the Supreme Court vide order dated September 24, 2007. This is not a case wherein the appellants had granted benefit of regularisation of services to similarly situated persons but benefit of regularisation of services was granted pursuant to the direction of the Court which is ultimately upheld by the highest court of the land. Therefore, it is difficult to conclude that illegal/improper regularisation of services was granted and therefore the respondent is not entitled to benefit of grant of regularisation of his service. Under the circumstances, the principle laid down in Post Master General, Kolkata (Supra) would not apply to the facts of the instant case.

On review of the evidence adduced by the parties, this Court is of the opinion that a just order is passed by the learned Single Judge which does not call for any interference in the instant appeal. The appeal therefore which lacks merits, deserves dismissal.

For the foregoing reasons, the appeal fails and is dismissed.

[BHANWAROO KHANJ. [J.M.PANCHAL],CJ.

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